IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

CRL.A.No. 1244 of 2001()

CC.211/1999 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II, NEDUMANGAD
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APPELLANT: COMPLAINANT

N.ANILKUMAR, SANKARA VILASOM,
KULAPPADA P.O., NEDUMANGAD.

BY ADV. SRI.K.SATHEESH KUMAR
SRI.T.A.UNNIKRISHNAN

RESPONDENT/ ACCUSED & STATE
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1. **PRATHAPPAN NAIR, PROPRIETOR,**
REETHU ELECTRONICS, KULAVILAKOM,
NEDUMANGAD

2. **THE STATE REP.BY PUBLIC PROSECUTOR,**
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.BASANT BALAJI
PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13 / 07 /2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl.A.No.1244 of 2001

Dated this the 13th day of July, 2007

JUDGMENT

The appellant is the complainant in C.C.No.211/99 in the file of Judicial First Class Magistrate Court-II, Nedumangad with respect to the offence under Section 138 of the Negotiable Instruments Act.

2. The case of the complainant is that a sum of Rs.1,50,000/- was borrowed by the complainant and towards the discharge of the above liability, the impugned cheque dated 25.3.1999 was issued and that the same when presented for encashment got dishonoured for want of funds in the account of the accused. The lawyer notice was sent demanding payment, but no reply received and further no payment was also made.

3. The evidence adduced in the matter consisted the testimony of PWs' 1 to 3 and Exts. P1 to P10. The defence examined DWs' 1 and 2 and got marked Exts. D1 to D4. The defence version set up is that the accused had monetary dealings with DW2, the mother of the complainant and that he had

borrowed a sum of Rs.65,000/- from her and issued a blank cheque. The same was repaid and again a sum of Rs.20,000/- was borrowed. The cheque was not returned. The blank cheque issued has been misused to file the complaint through the son of DW2. The trial court found that defence version is more probable and it was also held that the source to lend the amount by the complainant has not been properly established.

4. I find that the evidence of PW1 as to the execution of the cheque is not vitiated by any pronounced infirmities. It is mentioned in the judgment of the court below that PW1 could not mention the said date of lending of the cheque. In the cross examination, he has stated that it was on 3rd January that he paid the amount to the accused. There was no specific contention that the complainant is not having the required source to lend the amount. It is seen that he has answered in the cross examination that two Angili trees and rubber trees were sold to one Muraleedharan Pillai in 1998. The above Muraleedharan Pillai was examined as DW1 who has deposed that the trees were purchased by him from the father of the complainant and the

amount paid was Rs.44,000/-. I find that the facts brought out from the examination of PW1 and DW2, the mother of the complainant would indicate that it cannot be held that he has not having the resources to lend the money although he was working as a typist in the Secretariat. It is in evidence that the accused had borrowed substantial sums from DW2, the mother of the complainant. It is seen from the evidence of DW2 that her husband was a bank employee and the accused was also working along with him and subsequently resigned the job and shifted to business. Concerning the above family background of the complainant it cannot held that he would not be having the resources to lend the amount. DW2, the mother of the complainant examined at the instance of the accused has not supported the version of the accused. I find that the execution of the cheque and the dishonour for want of funds in the account of the accused stands proved from the evidence of PWs' 1 to 3. PWs' 2 and 3 are the Bank Managers. The attempt to rebut the statutory presumptions through DWs' 1 and 2 has not succeeded.

5. In the circumstances, I find that the findings of the

courts below are liable to be set aside and I do so. The complainant has succeeded in establishing the guilt of the accused beyond reasonable doubt. The accused is convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced to imprisonment till the rising of the court and to pay a compensation of Rs.1,50,000/- and in default, to undergo simple imprisonment for three months. Respondent/accused is granted six months' time to pay the amount of compensation. He shall appear before the Judicial First Class Magistrate Court-II, Nedumangad on 14.1.2008 to receive sentence.

The criminal appeal is disposed of accordingly.

K.R.UDAYABHANU,
JUDGE

csl